

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AEGIS, MISSION ESSENTIAL
PERSONNEL, L.L.C,

Plaintiff,

v.

UNIVERSAL FUNDING CORPORATION,

Defendant.

NO. CV-05-0351-EFS

**ORDER GRANTING IN PART &
DENYING IN PART
DEFENDANT'S MOTION FOR
RECONSIDERATION**

Before the Court, without oral argument, is Defendant Universal Funding Corp.'s ("Universal") Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion for Preliminary Injunction. (Ct. Rec. 26.) Universal asks the Court to require \$146,000 of the Fifth Account to be placed in the Registry of the Court, rather than only \$50,000 as previously ordered by the Court, contending Universal is entitled to enforce the 15% "non-immediate transferral provision" against Aegis, Mission Essential Personnel, L.L.C.'s ("Aegis") due to Aegis' failure to forward the State Department's payment on the Second Account for approximately a four week period. Aegis opposes the motion contending (1) Universal did not previously assert a right to enforce the 15% non-immediate transferral provision and, thus, waived this argument, (2) Universal cannot assert a right to enforce the 15% non-immediate

1 transferral provision because the delayed payment on the Second Account
2 was due to Universal's failure to properly administer the collection of
3 funds from the State Department, (3) the 15% non-immediate transferral
4 provision is unenforceable as a matter of law, and (4) requiring
5 additional money to be placed into the Registry of the Court would in
6 effect be giving Universal a prejudgment writ of attachment, a remedy
7 Universal has not shown it is entitled to. After reviewing the submitted
8 materials and applicable authority, the Court grants in part and denies
9 in part Universal's motion, requiring a total of \$116,125 to be deposited
10 into the Registry of the Court, rather than \$146,000 as requested by
11 Universal.

12 As an initial matter, even though this reconsideration motion is
13 filed by Universal, the underlying Order addressed Aegis' Motion for
14 Preliminary Injunction; accordingly, the Court must determine whether its
15 determination that Aegis is entitled to preliminary injunctive relief by
16 requiring Universal to submit \$335,817.95 to Aegis (with \$50,000 also to
17 be deposited into Registry of the Court) is appropriate. First, even
18 though the enforceability of the 15% non-immediate transferral provision
19 was not previously specifically argued by the parties, the Court finds
20 Universal did not waive its argument concerning the 15% non-immediate
21 transferral provision. Second, after considering the 15% non-immediate
22 transferral provision, the Court finds Aegis failed to show a probability
23 of successfully challenging the lawfulness of this provision. See
24 *Wallace Real Estate Inv., Inc.*, 124 Wash. 2d 881 (1994). Yet, the Court
25 finds Aegis has shown the existence of serious questions as to whether
26 Universal can benefit from this provision, especially given that it

1 appears the first time Universal sought to enforce the 15% non-immediate
2 transferral provision was in its Motion for Reconsideration.

3 However, in light of the Court's previous rulings terminating the
4 assignment of payment by the State Department on Aegis' accounts to
5 Universal and requiring Universal to submit \$240,817.65 to Aegis, the
6 Court finds the balance of hardships does not require Universal to submit
7 the disputed \$96,000 to Aegis. Yet, the Court agrees with Aegis that
8 Universal is not allowed to retain such funds during the pendency of the
9 suit. Accordingly, the Court requires the disputed \$96,000 to be
10 deposited in the Registry of the Court. The Court does not agree with
11 Universal that \$146,000 needs to be deposited in the Registry of the
12 Court. Rather, the Court finds the deposit of \$116,125 into the Registry
13 of the Court appropriate, given that the Court has found serious
14 questions exist as to whether Universal is entitled to the Early
15 Termination Fee (approximately \$20,125) and whether Universal may enforce
16 the 15% non-immediate transferral provision associated with the Second
17 Account (approximately \$96,000).

18 For the reasons given above, **IT IS HEREBY ORDERED:** Universal's
19 Motion for Reconsideration (Ct. Rec. 26) is **GRANTED IN PART AND DENIED**
20 **IN PART. Within two weeks** of entry of this Order, Universal shall submit
21 **(1) \$66,125 of the Fifth Payment to the Registry of the Court,** which
22 shall be deposited in an interest bearing account pending resolution of
23 the merits of this case, and **(2) \$28,875 of the Fifth Payment to Aegis.**
24 Notice of the compliance with the above Court orders shall be filed with
25 the Court within three weeks of the date of this Order. In summary, the
26 State Department's \$385,817.65 payment on the Fifth Account is to be

1 divided as follows: \$269,692.65 to Aegis and \$116,125 deposited into the
2 Registry of the Court.

3 **IT IS SO ORDERED.** The District Court Executive is directed to file
4 this Order and provide copies of this Order to counsel and the Financial
5 Administrator.

6 **DATED** this 9th day of March, 2006.

7
8 S/ Edward F. Shea
9 EDWARD F. SHEA
United States District Judge

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